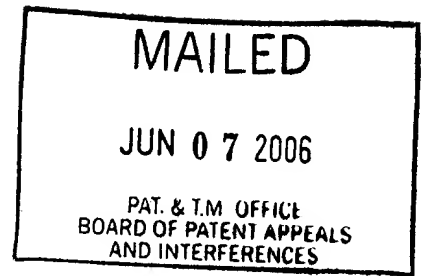


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCE

Ex parte STEPHEN NUSS

Application 09/760,136



ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on May 23, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing are identified below.

A review of the file indicates that on October 24, 2005, appellant filed an Appeal Brief under the rules set forth in 37 CFR § 41.37(c). However, the Appeal Brief filed on October 24, 2005, does not fully comply with the new rules under 37 CFR § 41.37(c).

37 CFR § 41.37(c) states in part:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(I) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(I) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section:

(ix) **Evidence appendix.** An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

(x) **Related proceedings appendix.** An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief filed October 24, 2005:

1) "Evidence Appendix," as set forth in 37 CFR § 41.37(c)(1)(ix); and

2) "Related Proceedings Appendix," as set forth in 37 CFR § 41.37(c)(1)(x).

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It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c). For more information on the Board's new rules, please see the web page entitled "More Information on the Rules of Practice Before the BPAI," Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>.

On December 29, 2005, an Examiner's Answer was mailed. A review of the Examiner's Answer reveals that it is not in compliance with the headings as required under 37 CFR § 41.37(c).

An in-depth review of the Examiner's Answer mailed on December 29, 2005, reveals that under the heading Evidence Relied Upon, the prior art relied on was not listed. The MPEP 1207.02(A) states:

A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

- (8) *Evidence Relied Upon*. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Proper correction of the Examiner's Answer is required.

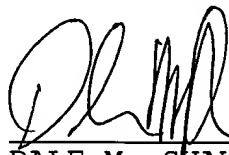
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Accordingly, it is

ORDERED that the application is return to the Examiner
to:

- 1) hold the Appeal Brief filed on October 24, 2005,
defective;
- 2) notify appellants to file a supplemental Appeal Brief
in compliance with 37 CFR § 41.37 or for the examiner to
present a statement regarding the position taken on the
missing appendices;
- 3) to vacate the Examiner's Answer mailed December 29, 2005,
and issue a revised Examiner's Answer in accordance with
the new rules; and
- 4) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCE



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